

**ENTERED**

November 12, 2019

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION

AGUSTO LAZO-AGUIRRE,  
BOP # 15209-002,

VS.

UNITED STATES OF AMERICA

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CRIMINAL NO. 3:16-15-1

CIVIL ACTION NO. 3:19-241

**ORDER DISMISSING CIVIL ACTION**

On July 15, 2019, Lazo-Aguirre filed a document (Dkt. 323) that was construed by the Court as a motion under 28 U.S.C. §2255 to vacate, set aside, or correct his sentence. The Court then issued a warning pursuant to *Castro v. United States*, 540 U.S. 375, 383 (2003), informing Defendant that if his filing was characterized as a motion under § 2255, “he may be prohibited from asserting additional § 2255 claims in the future and from filing any subsequent § 2255 motion” (Dkt. 324, at 2 (citing 28 U.S.C. § 2255(h))). The Court ordered Defendant to file within thirty days either an amended motion under § 2255 or a motion to withdraw, and provided him with forms for both options. The Court further stated, “If the defendant fails to comply as directed, the court will dismiss this action without further notice for want of prosecution” (*id.*) (emphasis original).

More than thirty days have elapsed since the Court entered its order. Defendant filed a response (Dkt. 329) to the order but failed to comply with the Court’s instructions and has filed neither an amended motion nor a motion to withdraw. Under the inherent powers necessarily vested in a district court to manage its own affairs, the Court determines

that dismissal for want of prosecution is appropriate. *See* FED. R. CIV. P. 41(b); *Gates v. Strain*, 885 F.3d 874 (5th Cir. 2018); *Nottingham v. Warden, Bill Clements Unit*, 837 F.3d 438, 440–41 (5th Cir. 2016) (a district court may dismiss an action *sua sponte* for failure to prosecute an action or to comply with court orders).

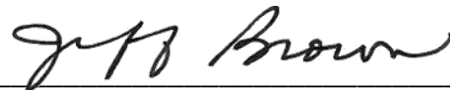
Relief from this order may be granted upon a proper showing under Rule 60(b) of the Federal Rules of Civil Procedure. Such a showing must include, at a minimum, Lazo-Aguirre's full compliance with all of the Court's previous orders.

The Court therefore **ORDERS** as follows:

1. Lazo-Aguirre's motion to vacate under 28 U.S.C. § 2255 (Dkt. 323) is **DENIED without prejudice.**
2. Civil Action No. 3:19-241 is **DISMISSED without prejudice.**

The Clerk will provide a copy of this order to the parties.

SIGNED at Galveston, Texas, on November 12th, 2019.



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JEFFREY VINCENT BROWN  
UNITED STATES DISTRICT JUDGE